IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 338 OF 2006.
IN
WRIT PETITION NO. 1266 OF 2005

M/s.Feddetrs Lloyd Corporation Ltd.
and others. ... Appellants.

Versus.

Shri Bhujanga A.Shetty and another. ... Respondents.

Shri Ashok D.Shetty with Ms.Rita Joshi for the Appellants.

Shri Kishore Shetty for the Respondents.

CORAM : KSHITIJ R.VYAS, C.J., &
ABHAY S.OKA, J.

DATE : 20th June, 2006.

P.C.:

1. In this appeal the Appellants have challenged the order dated 5th May 2005 whereby the learned single Judge dismissed the writ petition and confirmed the order dated 30th September 2004 passed by the Industrial Court in Complaint (ULP) No.528 of 2003. The Industrial Court after appreciating the evidence on record allowed the complaint preferred by the Respondent by holding that the employer has engaged in unfair labour practices under Items 5, 9 and 10 of Schedu,le IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and directed the Appellants to pay to Respondent No.1 his salary commencing from April 2002 until his services are terminated in accordance with procedure established by

law. The learned Industrial Court also directed the Appellants to pay to the Respondent No.1 medical reimbursement and LTA amounting to Rs.9200/- with interest thereon at the rate of 10% per annum till realisation due in the year 2002 and also allow the Respondent No.1 to sign the muster roll till his services are terminated with due process of law at Bombay office.

2. The learned Counsel for the Appellant submitted that the Appellant's case was that Respondent No.1 was not a workmen and was employed in a supervisory capacity. According to the learned Counsel, when the Respondent No.1 has come the Court with the plea that he was a workmen, it was for him to prove the same. However, the Industrial Court has wrongly cast burden on the Appellant to prove that the Respondent No.1 was working in a supervisory capacity. According to the learned Counsel, considering the duty performed by the Respondent No.1, the reliefs as prayed for should not have been granted. To substantiate his submission, the learned Counsel placed reliance on a decision rendered by the Apex Court in the case of Mukesh K.Tripathi v/s. Senior Divisional LIC and others (2004-III-LLJ page 740). Same submission was advanced before the learned single Judge also. The learned single Judge has appreciated the said contention and rejected the same by observing as under:

"3. A perusal of the evidence of the witness for the management would be material both in regard to the issue as to whether the First Respondent is a workman and on the merits of the complaint. The Management's witness who was the Branch Manager stated that when he joined the Bombay office there were four employees excluding him, one of them was designated as an Assistant Regional Manager "to impress the customers". The First Respondent, the witness stated, was looking after the accounting activities, he was maintaining petty cash, receiving cheques and issuing vouchers to the Delhi office. At the relevant time, some payments were received by the Bombay office while others used to be received at Delhi. Whenever the Bombay office would receive cheques, the First Respondent would issue vouchers and would deposit the cheques in the bank. The First Respondent would similarly make payments against vouchers submitted by employees or expenses incurred on behalf of the company. Some of the payments which were made by the First Respondent used to be sanctioned by the Branch Manager. The witness admitted that he had no document to show that the First Respondent had sanctioned

payments on his own. The witness admitted that the work which was done by the First Respondent confined him to maintain the accounts with the Bombay Office. The witness was unable to state as to what managerial or administrative decisions, if any, were taken by the First Respondent. He was unable to produce any document to show that the First Respondent had any workman under his control. The management's witness admitted that the First Respondent had no authority to recruit any employee, to take disciplinary action, to sanction increments or to enter into contracts on behalf of the company.

4. On this state of the record, the Industrial Court was, in my view, justified in coming to the conclusion that the dominant nature of the work which was performed by the First Respondent was clerical and that his designation as an Accounts Executive (cash) was only a change of nomenclature which did not alter the essential nature of his duties. The workman was essentially carrying out accounting work. He had no power to appoint any employee or to bind the company in relation to a third party. The finding of the Industrial Court in this regard is entirely

correct and does not warrant any interference."

Since the parties knew the controversy involved in the matter and led evidence before the Industrial Court, the issue of burden ceases to have any significance. The learned single Judge after appreciating the evidence, documentary as well as oral, has recorded the findings. This Court in appeal cannot again reappreciate the evidence and take a different view in the matter. So far as the decision of the Apex Court cited by the learned Counsel for the Appellant in the case of Mukesh K.Tripathi (supra) is concerned, there cannot be any dispute about the principle laid down by the said decision. However, in view of the concurrent findings of facts, we are of the view that the judgment of the learned Single Judge does not require any interference. There is no substance in the Appeal and the same is rejected.

CHIEF JUSTICE

ABHAY S.OKA, J.